

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

IN RE WASHINGTON MUTUAL
MORTGAGE BACKED SECURITIES
LITIGATION,

This Document Relates to: ALL CASES

Master Case No. C09-037 MJP

[Consolidated with: Case Nos.
CV09-0134 MJP, CV09-0137 MJP, and
CV09-01557 MJP]

**DEFENDANTS' MOTION TO COMPEL
DOCUMENTS FROM BOILERMAKERS
NATIONAL ANNUITY TRUST**

**NOTE ON MOTION CALENDAR:
AUGUST 12, 2011**

I. INTRODUCTION

Defendants WaMu Asset Acceptance Corporation, WaMu Capital Corporation, David Beck, Diane Novak, Richard Careaga and Rolland Jurgens (collectively, “Defendants”) have propounded 43 separate requests for the production of documents to Lead Plaintiff Boilermakers National Annuity Trust Fund (“Boilermakers”). In response to those requests, Boilermakers has produced exactly *eleven documents*. It simply is not credible that Boilermakers has only eleven responsive documents in its possession, custody or control. Indeed, productions received from third-parties, the testimony of Boilermakers’ own 30(b)(6) witness and Boilermakers’ representations during numerous meet-and-confers prove that Boilermakers has additional responsive documents that should be produced.

First, Boilermakers has produced only one document reflecting communications with its investment advisors. But those very investment advisors produced several additional responsive documents that indisputably were sent to Boilermakers. Boilermakers does not even deny that it has additional responsive documents on this topic; instead, it refuses to produce such documents on the ground that they are “cumulative” of two account summaries that Boilermakers did produce. But those “account summaries” are *not* reports from Boilermakers’ investment advisors, making Boilermakers “cumulative” argument nonsensical.

Second, Boilermakers has produced *only one email and no electronic documents*, despite 30(b)(6) deposition testimony confirming that, when Boilermakers searched its electronic archives for responsive materials (using search terms chosen by its counsel to capture responsive documents), it uncovered a “large file of data”, including email.

Third, Boilermakers has refused to produce documents relevant to issues of valuation and damages until it offers expert testimony on those issues. But Boilermakers’ choice to wait until

expert discovery to take a position regarding it claimed damages does not relieve it of its discovery obligations with respect to those issues now.

II. FACTUAL BACKGROUND

A. DEFENDANTS' DOCUMENT REQUESTS AND BOILERMAKERS' DOCUMENT PRODUCTION.

On November 22 and December 27, 2010, Defendants served 43 separate requests for production of documents on Boilermakers (the "Requests"). Those Requests seek information and documents on the following subjects, among others: (i) Boilermakers' and its investment advisors' knowledge of underwriting and origination practices for the residential mortgage-backed securities ("RMBS") at issue (the "Securities"); and (ii) the value of those Securities. The Requests and Boilermakers' responses are provided in Appendix A to this Motion. Specifically, Requests 9, 10 and 30 seek documents concerning Boilermakers' knowledge of the underwriting standards of the originators involved in the offerings at issue. Requests 13 and 14 seek documents relating to the RMBS in Boilermakers' portfolio, including when it made its purchases and how the RMBS performed. Requests 4, 8, 38 and 43 seek internal and external communications concerning Boilermakers' purchases of the Securities, including its communications with the third parties that it alleges performed its investment analysis, research and due diligence. Request 19 seeks information regarding Boilermakers' valuation of the Securities and alleged damages.

In response to the Requests, Boilermakers has produced *eleven documents*: two redacted account summaries from the custodian bank; two investment policy statements (dated June 2006 and June 2008); two contracts with Boilermakers' investment consultant, Callan Associates, Inc. ("Callan"); Boilermakers' investment guidelines for one of Boilermakers' fixed income investment managers, McMorgan & Company ("McMorgan"); three pieces of correspondence

(including one email); and board minutes from a meeting of the board of trustees of Boilermakers. (Declaration of Jee Young You In Supp. of Defs.' Mot. to Compel ("You Decl.") at ¶ 5.)

Boilermakers produced *no* documents concerning: (i) its decision to invest in the Securities in February 2007 and February 2008; (ii) its or its investment managers' valuation of the Securities and/or similar RMBS; or (iii) its knowledge of the origination and underwriting practices for the loans backing the Securities. (*Id.*)

In its initial production, Boilermakers produced only *seven* documents, and so, on March 4, 2011, Defendants wrote to complain about Boilermakers' inadequate production, including its failure to provide *any* electronic communications or to produce documents even for certain requests to which Boilermakers indicated it would respond. (*See* Letter from John Pernick (March 4, 2011), Ex. A.)¹ On March 14, 2011, Boilermakers supplemented its initial production with three additional documents, and declared that its production was "substantially complete."² (*See* Letter from Christopher Lometti (Mar. 14, 2011), Ex. B at ¶¶ 1, 2, 4, 5, 8, 9 and 10.)

On March 21, 2011, the parties met and conferred by phone regarding the continued deficiencies in Boilermakers' production. (*See* You Decl. at ¶ 6.) Defendants again requested documents regarding Boilermakers' or its investment advisors' knowledge of underwriting and origination practices, different valuation methodologies and other information related to damages. (*Id.*) Boilermakers reiterated that apart from the three Requests to which it objected (and which are not at issue in this motion), Boilermakers had searched for and produced all relevant documents in its possession, custody or control. (*Id.*) In particular, both in the March 14 letter and during the March 21 teleconference, Boilermakers represented that (i) counsel had used

¹ References to "Ex. ___" are to the exhibits attached to the You Declaration.

² On April 29, 2011, Plaintiffs further supplemented the production with redacted minutes of the Boilermakers' September 7, 2008, board of directors meeting. (You Decl. at ¶ 4.)

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2 reasonable means to search for documents, including conducting searches of electronic files using
3 a “broad range of search terms”; (ii) documents were produced in the form “ordinarily
4 maintained” by Boilermakers in the normal course of business; and (iii) no responsive documents
5 were withheld. (*Id.* at ¶ 7.) Due to those representations, Defendants did not move to compel
6 further production at that time.
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8 **B. THIRD PARTY PRODUCTIONS AND THE 30(b)(6) DEPOSITION OF BOILERMAKERS**
9 **REVEALS SIGNIFICANT GAPS IN BOILERMAKERS’ PRODUCTION.**

10 Defendants received third party productions from Callan on April 4, 2011, and from
11 McMorgan on May 26 and 27, 2011. (You Decl. at ¶ 8.) Both produced relevant, responsive
12 documents of the sort that one would reasonably expect to have been in Boilermakers’ possession
13 but that, for some reason, Boilermakers did not produce. Specifically, the third party productions
14 contained emails to and from Boilermakers regarding its investments in the Securities, including
15 an email regarding the performance of Boilermakers’ fixed income portfolio, as well as numerous
16 monthly and quarterly reports (although seemingly not complete sets) from both investment
17 advisors to Boilermakers. (*Id.*) The emails and reports contained information relevant and
18 responsive to the Requests, including the Securities’ ratings, allocation of Boilermakers’
19 investment in RMBS, investment strategies, the purchase and disposition of the Securities and
20 information about market conditions. (*Id.*) And, from the face of the documents, it is clear they
21 were sent to Boilermakers (and, thus, should be in Boilermakers’ files).
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25 At the Rule 30(b)(6) deposition of Boilermakers’ Chief Investment Officer, Mario
26 Rodriguez, held on April 26, 2011, Mr. Rodriguez testified that: (i) Boilermakers’ counsel
27 provided him with a list of documents to produce as well as a list of search terms (Rodriguez Tr.
28 84:5-85:5, Ex. E); (ii) the search terms were used to search for electronically stored information

(*id.*); (iii) Boilermakers' archives— where all electronic documents at Boilermakers are stored after six or ten months and are “maintained forever”—were searched (*id.* 88:2-88:19); *and* (iv) *the results of the search yielded “a large file of data,” including email documents* (*id.* 134:25-135:11). He also testified that Boilermakers was in possession of various reports from Callan and McMorgan (*id.* 37:6-12; 61:16-62:14; 67:25-68:13; 70:24-72:4; 79:18-80:10), *and that there was no reason those reports would not have been produced* (*id.* 87:5-14).

C. THE PARTIES CONFER REGARDING DISCOVERY BUT DO NOT REACH ANY RESOLUTION.

On April 29, 2011, the parties again met and conferred. (You Decl. at ¶ 9.) During that teleconference, Boilermakers abandoned its prior position that it had produced all responsive documents and, instead, refused to produce the investment advisors' reports on the basis that they were “cumulative” of the two redacted custodian bank reports already produced. (*Id.* at ¶ 9.) Boilermakers did indicate that it would investigate whether it had any additional responsive documents but, by May 26, 2011, Boilermakers had failed to inform Defendants that a supplemental production would be forthcoming. (*Id.* at ¶¶ 9-10.) Defendants sent another letter requesting the production of the reports, and any emails and electronic documents that were missing from the production. (See Letter from John Pernick (May 27, 2011), Ex. C.)

On June 2, 2011, Boilermakers reiterated its position that the Callan and McMorgan reports were “cumulative of the custodian bank reports that have already been produced” and that because the reports were already produced by Callan and McMorgan, it would not produce any such reports. (See Letter from Christopher Lometti (June 2, 2011), Ex. D.) Boilermakers also responded that emails regarding the Securities had been produced. (*Id.*) But, to the contrary, Boilermakers has produced only one email in this case, which dealt with the hiring of

its lawyers (and had nothing to do with the Securities). Boilermakers never responded to Defendants' more general request for all responsive electronic documents and communications. (See Ex. C at 2; Ex. D at ¶ 6.) The parties are at an impasse.

II. ARGUMENT

A. THE DOCUMENTS SOUGHT ARE NECESSARY FOR THE DEFENSE OF THIS ACTION AND BOILERMAKERS' PRODUCTION IS WOEFULLY INADEQUATE.

The Requests seek documents regarding (i) Boilermakers' knowledge of underwriting practices at issue in this action (which relate to Defendants' statutory defense of knowledge as provided by Section 11); and (ii) Boilermakers' alleged damages, if any. Boilermakers has never contested that such documents are responsive—nor could it. It is well established that documents that bear on a party's defenses or on the calculation of damages are relevant and, therefore, proper subjects of discovery. *See, e.g., Green v. Seattle Art Museum*, No. C07-58, 2008 WL 624961, at *6 (W.D. Wash. Feb. 8, 2008) (Pechman, J.); *see also City of Seattle v. Prof'l Basketball Club, LLC*, No. C07-1620, 2008 WL 539809, at *2 (W.D. Wash. Feb. 25, 2008) (Pechman, J.).

Instead, Boilermakers initially represented to Defendants that it *had produced* all responsive documents within its possession, custody or control. That is demonstrably false. Callan and McMorgan each produced responsive documents sent to Boilermakers in the ordinary course of business. Boilermakers has refused to produce those same documents (and others like them) from its own files. Similarly, Boilermakers' CIO testified that Boilermakers found "a large file of data" in its electronic archives using search terms designed by counsel to uncover responsive documents (Rodriguez Tr. 134:25-135:11), but none of those documents were

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2 produced. Boilermakers apparently now concedes that it has additional responsive documents in
3 its possession, but still refuses to produce them.

4 Boilermakers' position "suggest[s] a less than diligent, thorough review of and search for
5 responsive documents". *Woods v. Kraft Foods, Inc.*, No. CV F 05-1587, 2006 WL 2724096, at *7
6 (E.D. Cal. 2006). Indeed, Boilermakers' failure to produce documents that indisputably should
7 exist within its own files suggests fundamental problems with Boilermakers' production. *See,*
8 *e.g., Play Visions, Inc. v. Dollar Tree Stores, Inc.*, No. C09-1769, 2011 WL 2292326, at *7 (W.D.
9 Wash. June 8, 2011) (plaintiff "abused the discovery process" where "the record ma[d]e clear that
10 [the plaintiff's] response to [the defendant's] first requests for production was not complete"); *cf.*
11 *Nursing Home Pension Fund v. Oracle Corp.*, 254 F.R.D. 559, 565 (N.D. Cal. 2008) (sanctioning
12 party for failure to produce emails because "having established with certainty that numerous
13 emails were not produced from Ellison's email files—because the emails *were* produced from
14 other files or accounts—it is impossible to know whether additional unproduced emails were also
15 deleted or not turned over. This uncertainty about the existence of other emails is precisely the
16 reason all of Ellison's emails should have been preserved and produced.").

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20 **B. THE REPORTS OF BOILERMAKERS' INVESTMENT ADVISORS ARE NOT**
21 **UNREASONABLY CUMULATIVE.**

22 Boilermakers resists producing the reports of its investment advisors on the grounds that
23 they are "cumulative" of documents that have been produced. (*See* Ex. D at ¶¶ 1, 4.) As an initial
24 matter, discovery may be limited on that basis only if it is "*unreasonably* cumulative or
25 duplicative," Fed. R. Civ. P. 26(b)(2)(C) (emphasis added), and it is Boilermakers' burden to
26 prove as much. *Balarezo v. Nth Connect Telecom, Inc.*, C 07-5243, 2008 WL 2705095, at *2
27 (N.D. Cal. July 8, 2008) (citing *Blakenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th Cir. 1975));
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2 *Ramos v. U.S. Bank Nat. Ass'n*, CV 08-1150, 2009 WL 3854108, at *4 (D. Or. Nov. 17, 2009).

3 Boilermakers has made no such showing.

4 *First*, the two custodian bank reports that Boilermakers did produce are *different* reports
5 prepared and provided to Boilermakers by *different* entities for *different* purposes than the
6 investment advisors' reports. The custodian bank reports are merely redacted account statements
7 with limited information regarding the WaMu Mortgage Pass Thru Certificate Series 2006-AR7,
8 such as the balance, debit and credit on the account. (You Decl. at ¶ 11.) In contrast, the
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McMorgan reports provide descriptive information regarding responses to particular inquiries by
Boilermakers, valuations of various RMBS, investment summaries, fixed income quality ratings
and transaction activity. (*Id.*) Callan's quarterly reports provide similarly descriptive information
regarding Boilermakers' monthly asset allocation report; quarterly investment measurement
report; market overview; comparison of investment manager returns to indexes; investment
manager returns and peer group rankings; portfolio-specific details (including investment-level
details); and market indicators. (*Id.*) See, e.g., *Deployment Med. Consultants, Inc. v. Pipes*,
08cv1959, 2011 WL 811579, at *3 (S.D. Cal. Mar. 2, 2011) (request was not unreasonably
cumulative or duplicative even though the records were "similar" to those already produced).

Second, the fact that McMorgan and Callan produced *some* investment reports does not
obviate Boilermakers' obligation to provide *all* the reports in *its* possession. There are obvious
gaps in what the third parties produced—Defendants have received less than all of Callan's
quarterly reports from the 2007-2008 time period, none of Callan's monthly snapshot performance
reports and only a fraction of McMorgan's quarterly reports. (See You Decl. at ¶ 8.) Defendants
should not be forced to go back to Callan and McMorgan to fill the gaps in Boilermakers'
production. *Arista Records LLC v. Lime Group LLC*, No. 2:10-CV-02074, 2011 WL 679490, at

*2 (W.D. Wash. Feb. 9, 2011) (Pechman, J.); *Nidec Corp. v. Victor Co. of Japan*, 249 F.R.D. 575, 577 (N.D. Cal. 2007). Instead, Boilermakers should be compelled to produce the complete set of whatever Callan and McMorgan reports it has in its files. *Woods*, 2006 WL 2724096, at *6 (party must “produce all specified relevant and nonprivileged documents or other things” in its possession, custody or control); *Carter v. Dawson*, No. 1:07-01325, 2010 WL 4483814, at *5 (E.D. Cal. Nov. 1, 2010) (same).

Third, even if Callan and McMorgan had produced complete sets of the reports (and they have not), Defendants still would be entitled to copies of the reports from Boilermakers’ own files. *Woods*, 2006 WL 2724096, at *6; *Oracle Corp.*, 254 F.R.D. at 565 (“Defendants . . . argue that plaintiffs are not entitled to receive multiple copies of Ellison’s emails. The Court disagrees. It could have been helpful to plaintiffs to demonstrate that certain emails were discovered in Ellison’s files; otherwise, for instance, Ellison could argue that he never actually read or received an email that was sent to him, and thus had no knowledge of its contents.”).

C. REQUESTS FOR PRODUCTION 9, 10, 30.

Boilermakers stated that it would produce documents responsive to Requests 9, 10 and 30, but none of its eleven documents responds to these Requests. Requests 9, 10 and 30 seek documents relating to Boilermakers’ knowledge of “whether the underlying mortgage loans were originated in conformity with the underwriting guidelines stated in the Offering Documents.” (See SAC ¶ 9.) Section 11 provides a complete defense against any claimant if “it is proved that at the time of . . . acquisition [the claimant] knew of such [alleged] untruth or omission.” 15 U.S.C. § 77k(a). Documents responsive to the above requests bear on that defense in at least two ways. *First*, Requests 9 and 10 seek documents demonstrating Boilermakers’ knowledge of WaMu’s and others’ mortgage origination and underwriting practices. In other words, if

Boilermakers had knowledge whether the underlying mortgage loans were originated in conformity with the underwriting standards it alleges “ceased to exist,” *see Boilermakers Nat’l Annuity Trust Fund v. WaMu Mortgage Pass Through Certificates*, 748 F. Supp. 2d 1246, 1255 (W.D. Wash. 2010), Defendants have a complete defense to that claim (even if the underwriting guidelines did “cease to exist,” which Defendants strongly dispute). *Second*, Request 30 seeks documents evidencing the risks associated with investing in the Securities. Those documents are relevant to Defendants’ knowledge defense in that they may demonstrate when Boilermakers became aware of the default and delinquency rates for the loans backing the Securities that Plaintiffs allege occurred within months after the “Offerings were consummated” and which allegedly “are reflective of a disregard for underwriting guidelines.” (*See* SAC ¶¶ 132-33.)

D. REQUESTS FOR PRODUCTION 13 & 14.

Boilermakers refuses to produce documents in response to Requests 13 and 14 to the extent they seek information relating to RMBS other than those at issue here on the ground that those documents “do not reference the WaMu Certificates and are therefore irrelevant to this litigation”. (Ex. D at 2.) However, *Plaintiffs* put the performance of other RMBS at issue. Specifically, Plaintiffs’ proposed expert, Scott Hakala, opined that there had been an “abandonment” of underwriting standards and he purportedly reached that opinion, in part, by comparing the performance of the loans underlying the Securities against the performance of loans underlying other, purportedly similar RMBS. (Declaration of Scott Hakala (“Hakala Decl.”) ¶¶ 9(1-m) (Declaration of Kenneth M. Rehns In Supp. of Mot. for Class Cert., Ex. B (Dkt. No. 226).) If the performance of other RMBS is relevant to determining whether the underwriting guidelines here “ceased to exist” (as Plaintiffs’ expert claims), then Defendants are entitled to documents about other RMBS in Boilermakers’ custody, possession and control. *See Beckner v.*

El Cajon Police Dep't, No. 07CV509, 2008 WL 2033708, at *4, 6 (S.D. Cal. May 9, 2008) (information discoverable where plaintiff placed the underlying facts at issue); *Fresenius Med Care Holding Inc. v. Baxter Int'l, Inc.*, 224 F.R.D. 644, 652-53 (N.D. Cal. 2004).

E. REQUESTS FOR PRODUCTION 4, 8, 38, 43

Boilermakers claims that the *three* pieces of correspondence it produced—only one of which relates to its investment in the Securities—satisfy Request Nos. 4, 8, 38 and 43, which seek relevant communications between it and its investment advisors. (See Ex. B at 1.) Boilermakers cannot properly dispute the relevance of the requested documents—Boilermakers itself has repeatedly put at issue its reliance on its investment advisors in making investment decisions. (See, e.g., Pls. Resp. and Obj. to Interrogatories, Set One (Ex. F).)

Boilermakers' position that, apart from *one* communication with McMorgan, it has no documents (and no emails or other electronic files at all) responsive to these Requests concerning an investment of millions of dollars (*see* SAC ¶ 22) strains credulity. As explained above, Boilermakers' third party investment advisors produced the sort of relevant documents that one would expect to be found in Boilermakers' own files, suggesting that Boilermakers' search (or production) has been inadequate. The testimony of Boilermakers' CIO that Boilermakers conducted electronic searches that yielded a large amount of electronic data, and that Boilermakers has reliable document retention policies and practices, reinforces the conclusion that Boilermakers has responsive documents that have not been produced. (See *supra* Part I.B.)

F. REQUEST FOR PRODUCTION 19

Boilermakers has refused to produce any documents relating to its alleged injury or damages, claiming that those documents “will be the subject of expert reports and discovery, which have not yet commenced.” (Ex. B at 3.) It is no secret that damages are a necessary

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2 element of a Section 11 claim, which a plaintiff must demonstrate by comparing the price at which
3 it purchased the security at issue with the value of such security at the time the action is filed. *See*
4 15 U.S.C. § 77k(e). Especially in this case, where there is no predetermined value (or exchange
5 trading price) for the Securities, information concerning Boilermakers' valuation methodologies
6 and proprietary models is particularly relevant to valuation and damages issues. (*See James*
7 *Report ¶¶ 74-77.*) Regardless of whether Boilermakers or its proffered experts opt to rely on any
8 of Boilermakers' own internal documents concerning its valuation of the Securities, such
9 documents are plainly fair game for discovery. *Green*, 2008 WL 624961, at* 6. Indeed,
10 Plaintiffs' proposed expert has already broached the issue of Plaintiffs' damages calculation in his
11 report in support of Plaintiffs' motion for class certification. (*See Hakala Decl. ¶¶ 33-34*); *see also*
12 *Green*, 2008 WL 624961, at *6.

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III. CONCLUSION

For the aforementioned reasons, the Court should compel Boilermakers to produce documents responsive to the Requests.

DATED this 26th day of July, 2011.

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Appendix A**DISPUTED DISCOVERY REQUESTS****A. Request for Production Nos. 9, 10, 30**

Request	Response
No. 9: All documents relating to the underwriting standards of any residential mortgage loan originator involved in the Offering.	Plaintiffs incorporate the general objections above as if set forth herein, Plaintiffs further object that this Request is overly broad, unduly burdensome, vague, and ambiguous; and fails to describe the requested information with reasonable particularity. Subject to and without waiving the foregoing specific and general objections, Plaintiffs will produce, to the extent they exist, responsive non-privileged and non-cumulative documents in their possession, custody, or control relating to the Certificates.
No. 10: All documents relating to the mortgage loan underwriting standards of Washington Mutual Bank, NA.	Plaintiffs incorporate the general objections above as if set forth herein Plaintiffs further object that this Request is overly broad, unduly burdensome, vague, and ambiguous; seeks information not relevant to the claim or defense of any party or not reasonably calculated to lead to the discovery of admissible evidence; fails to describe the requested information with reasonable particularity; and is oppressive. Subject to and without waiving the foregoing specific and general objections, Plaintiffs will produce, to the extent they exist, responsive non-privileged and non-cumulative documents in their possession, custody, or control.
No. 30: All documents relating to increases in borrower delinquency rates, as alleged in Complaint paragraph 132.	Plaintiffs incorporate the general objections above as if set forth herein Plaintiffs further object that this Request is overly broad, unduly burdensome, vague, and ambiguous; fails to describe the requested information with reasonable particularity; seeks information not relevant to the claim or defense of any party or not reasonably calculated to lead to the discovery of admissible evidence; seeks information already publicly available; and is oppressive. Subject to and without waiving the foregoing specific and general objections, Plaintiffs will produce, to the extent they exist, responsive non-privileged and non-cumulative documents in their possession, custody, or control related to the Certificates at issue in this

	action.
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B. Request for Production Nos. 13, 14

Request	Response
No. 13: All documents relating to any purchase, sale, trade, or any other disposition by You of any mortgage-backed securities, including, but not limited to, the Certificates.	<p>Plaintiffs incorporate the general objections above as if set forth herein. Plaintiffs further object that this Request is overly broad, unduly burdensome, vague, and ambiguous; fails to describe the requested information with reasonable particularity; and seeks information not relevant to the claim or defense of any party or not reasonably calculated to lead to the discovery of admissible evidence. Plaintiffs also object to this Request to the extent that it seeks documents that are duplicative and redundant of those requested in Request #1.</p> <p>Subject to and without waiving the foregoing specific and general objections, Plaintiffs will produce, to the extent they exist, responsive non-privileged and non-cumulative documents in their possession, custody, or control that relate to the Certificates.</p>
No. 14: All documents relating to any market for the purchase, sale or trade of mortgage-backed securities, including, but not limited to, the Certificates.	<p>Plaintiffs incorporate the general objections above as if set forth herein. Plaintiffs further object that this Request is overly broad, unduly burdensome, vague, and ambiguous; fails to describe the requested information with reasonable particularity; and is oppressive.</p> <p>Subject to and without waiving the foregoing specific and general objections, Plaintiffs will produce, to the extent they exist, responsive non-privileged and non-cumulative documents in their possession, custody, or control that relate to the Certificates.</p>

C. Request for Production Nos. 4, 8, 38, 43

Request	Response
No. 4: All documents relating to any communication between You and any Person relating to the Certificates or the Offering.	Plaintiffs incorporate the general objections above as if set forth herein. Plaintiffs further object that this Request is overly broad, unduly burdensome, vague, and ambiguous; seeks information not relevant to the claim or defense of any party or not reasonably calculated to lead to the discovery of admissible evidence; fails to describe the requested information

	<p>with reasonable particularity; and is oppressive. Subject to and without waiving the foregoing specific and general objections, Plaintiffs will produce, to the extent they exist, responsive non-privileged and non-cumulative documents in their possession, custody, or control which reasonably appear to be responsive to this request.</p>
<p>No. 8: All documents relating to due diligence performed by any Person with respect to the Pool.</p>	<p>Plaintiffs incorporate the general objections above as if set forth herein, Plaintiffs further object that this Request is overly broad, unduly burdensome, vague, and ambiguous; fails to describe the requested information with reasonable particularity; and is oppressive. Subject to and without waiving the foregoing specific and general objections, Plaintiffs will produce, to the extent they exist, responsive non-privileged and non-cumulative documents in their possession, custody, or control.</p>
<p>No. 38: All documents relating to Your monitoring or management of the size, value and risks of Your Certificates, including without limitation all position management reports and communications relating to monitoring or management of Your investments in the Certificates.</p>	<p>Plaintiffs incorporate the general objections above as if set forth herein. Plaintiffs further object that this Request is overly broad, unduly burdensome, vague, and ambiguous; fails to describe the requested information with reasonable particularity; seeks information not relevant to the claim or defense of any party or not reasonably calculated to lead to the discovery of admissible evidence; is duplicative and redundant of requests included in Defendants' First Requests for Production; and is oppressive. Without waiving the foregoing objections, see Plaintiffs' responses to Defendants' First Request for Production.</p>
<p>No. 43: All documents relating to communications, whether internal or between You and any Person, about risks or potential risks relating to the Certificates, whether before or after You purchased the Certificates, including any communications relating to Your decision to purchase, sell, or otherwise dispose of the Certificates.</p>	<p>Plaintiffs incorporate the general objections above as if set forth herein. Plaintiffs further object that this Request is overly broad, unduly burdensome, vague, and ambiguous; fails to describe the requested information with reasonable particularity; seeks information not relevant to the claim or defense of any party or not reasonably calculated to lead to the discovery of admissible evidence; is duplicative and redundant of requests included in Defendants' First Requests for Production; and is oppressive. Without waiving the foregoing objections, see Plaintiffs' responses to Defendants' First Request for Production.</p>

D. Request for Production No. 19

Request	Response
<p>No. 19: All documents relating to the alleged injury for which You seek compensation in this action, including, but not limited to, your alleged damages.</p>	<p>Plaintiffs incorporate the general objections above as if set forth herein. Plaintiffs further object that this Request is overly broad, unduly burdensome, vague, and ambiguous; fails to describe the requested information with reasonable particularity; seeks information that is redundant and duplicative of other requests; and is oppressive. Plaintiffs further object to this Request on the grounds that it calls for information and documents which will be the subject of expert reports and discovery, which have not yet commenced and seeks information and documents protected from disclosure by the attorney-client privilege and/or work product doctrine. Subject to and without waiving the foregoing specific and general objections, Plaintiffs will produce, to the extent they exist, responsive non-privileged and non-cumulative documents in their possession, custody, or control.</p>

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of July, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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DATED this 26th day of July, 2011 at Seattle, Washington.

By s/ Brian C. Free

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Certificate of Service - (CV09-037 MJP)

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